



MISSOURI ETHICS COMMISSION
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James Klahr
Executive Director

February 10, 2017

Re: Advisory Opinion No. 2017.02.CF.006

Dear

At the February 10, 2017 meeting of the Missouri Ethics Commission, your request for an opinion was discussed.

Opinion

Pursuant to §105.955.16, RSMo, the Missouri Ethics Commission may issue a written opinion regarding any issue on which the Commission can receive a complaint pursuant to §105.957, RSMo. The Commission receives complaints alleging violation of campaign finance provisions of Missouri law. This opinion is issued within the context of Missouri's laws governing such issues, and assumes the facts presented by you in your letter.

The question presented is:

Amendment 2 provides that political action committees shall only receive contributions from, among other donors, "... corporations, associations and partnerships formed under chapters 347 to 360, RSMo."

Is a foreign corporation, association or partnership holding a Certificate of Authority to transact business in Missouri under chapters 347 to 360, RSMo a corporation, association or partnership formed under chapters 347 to 360, RSMo for purposes of Amendment 2?

Political action committees can receive contributions from foreign corporations, associations or partnerships, holding valid certificates of authority to do business in this state under the chapters 347 to 360, RSMo.

The Commission interprets the prohibition on contributions to foreign corporations in Article VIII, 23.3(16)(c) not to extend to foreign corporations that have registered to do business in the state under Chapters 347 to 360, RSMo. This includes limited liability companies which fit within the requirements set forth in Commission Opinion 2017.02.CF.005, also issued on this day.

Supporting Analysis

Article VIII, §23 makes various references to “corporations” with both prohibitions on direct contributions from corporations to certain campaign finance committees, and authority to make contributions to continuing committees/political action committees, and a specific prohibition on contributions from foreign corporations. Subsection 7, which contains definitions of terms used in §23, does not define “corporation.”¹

§23.3(3) (a) provides prohibitions on corporate contributions as follows:

(3) (a) It shall be unlawful for a corporation or labor organization to make contributions to a campaign committee, candidate committee, exploratory committee, political party committee or a political party; except that a corporation or labor organization may establish a continuing committee which may accept contributions or dues from members, officers, directors, employees or security holders.

(b) The prohibition contained in subdivision (a) of this subsection shall not apply to a corporation that:

(i) Is formed for the purpose of promoting political ideas and cannot engage in business activities; and

(ii) Has no security holders or other persons with a claim on its assets or income; and

(iii) Was not established by and does not accept contributions from business corporations or labor organizations.

§23.3(12) however, provides that political action committees/continuing committees are authorized to receive contributions from “corporations, associations, and partnerships formed under chapters 347 to 360, RSMo, as amended from time to time...”

§23.3(16) prohibits campaign committees, candidate committees, continuing committees, exploratory committees, political party committees and political parties from receiving contributions from:

(a) Any natural person who is not a citizen of the United States;

(b) A foreign government; or

(c) Any foreign corporation that does not have the authority to transact business in this state pursuant to Chapter 347, RSMo, as amended from time to time.

¹ As noted in Commission opinion 2017.02.CF.002 the definitions of continuing and political action committees are substantially the same in §23.7. The Commission interprets these committees to be the same despite the fact that the constitutional provision refers to these committees in separate definitions. For the purposes of this Opinion, any references to either committee includes both.

The Commission previously issued two advisory opinions in 2010 following the passage of identical language in §23.3(12) upon passage of SB844.² Those opinions are MEC No. 2010.08.CF.004, <http://mec.mo.gov/Scanned/PDF/Opinions/446.pdf> and MEC No. 2011.03CF.002, <http://mec.mo.gov/Scanned/PDF/Opinions/446.pdf>.

One difference from SB844 is that the Article VIII, §23 contains §23.3(16) which also includes a prohibition on foreign nationals, foreign governments, and foreign corporations that do not have the authority to transact business in this state pursuant to Chapter 347, RSMo, Chapter 347 of the Missouri Revised Code is the “Missouri Limited Liability Company Act.” §347.010, RSMo.

Provisions governing foreign corporations holding a certificate of authority can be found in three of the chapters listed in §23.3(12). Those include corporations for profit, see §351.015(7), RSMo and §355.751, RSMo; nonprofit corporations, see §355.020.3, RSMo and §355.771, RSMo; and professional corporations, see §356.031, RSMo. In addition, § 347.015 (9), RSMo, defines a foreign limited liability company as “a limited liability company formed under the laws of any jurisdiction other than the state of Missouri,” and § 347.015 (15) considers a foreign limited liability company as a “person” under that chapter.

According to §351.582.2, RSMo:

A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by this chapter, is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

§355.771, RSMo contains identical language for foreign nonprofit corporations. §356.031, RSMo, which governs professional corporations states:

The general and business corporation law of Missouri, chapter 351, RSMo, shall be applicable to a professional corporation organized pursuant to sections 356.011 to 356.261, and to the extent chapter 351, RSMo, relates to foreign corporations generally, chapter 351, RSMo, shall be applicable to a foreign professional corporation subject to sections 356.011 to 356.261.

Likewise, the Missouri statutes contemplate the existence of partnerships registered both in Missouri and other states and countries, *See e.g.* §358.500 and §358.510, RSMo.

Finally §347.157, RSMo authorizes registration of a foreign limited liability company with the secretary of state.

§23.3(12) provides specific authorization for political action committees to receive contributions from corporations, associations and partnerships formed under those chapters, and §23.3(16) appears to include a prohibition for foreign corporations although referencing only one chapter

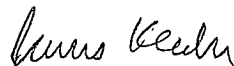
² S.B. 844, 2010, was declared unconstitutional in *Legends Bank v. State*, 361 S.W. 3d 383 (Mo. banc 2012).

of the Missouri Revised Code. It is the Commission's opinion that when both sections are read together, and because the legislature has expressly stated in those chapters listed in §23.3(12) that foreign corporations and other business entities shall have the same rights and privileges as domestic corporations and business entities, political action committees can receive contributions from foreign corporations, associations or partnerships, holding valid certificates of authority to do business in this state under the chapters 347 to 360, RSMo.

Consistent with this analysis, the Commission interprets the prohibition on contributions to foreign corporations in §23.3(16)(c) not to extend to foreign corporations that have registered to do business in the state under Chapters 347 to 360, RSMo. This includes limited liability companies which fit within the requirements set forth in Commission Opinion 2017.02.CF.005, also issued on this day.

MEC No. 2011.03.CF002, §351.582, RSMo, discussed the effect of a valid certificate of authority issued by the Missouri Secretary of State. The political action committee may use whatever evidence is available from the Secretary of State to ensure a foreign corporation holds a valid certificate of authority.

Sincerely,



James Klahr
Executive Director